

REMARKS

Claims 2-5, 13-15 and 23-26 are pending in the application. The amendments to the claims have been made to clarify the language of the claimed invention. Support for newly added claims 23-26 can be found at *inter alia*, page 14 in the specification. No new matter has been inserted into the application.

Rejection Under 35 U.S.C. 112, first paragraph – new matter

Claim 2 has been rejected under 35 U.S.C. 112, first paragraph for including new matter. Applicants traverse this rejection. Reconsideration and withdrawal thereof are respectfully requested.

The Examiner has rejected claim 2 for including new matter, in particular its recitation of the limitation of transfecting cells with a viral vector. Applicants do not understand this rejection since claims 1 and 2 as originally presented recite using viral vectors. Although claim 2 has been amended, its only amendment was to change the dependency of the claim, which was submitted in the Amendment of July 24, 2002. Therefore, there was no substantial amendment to claim 2 that may be considered new matter. Moreover, use of viral vectors for insertion in cells is discussed at least at page 14 in the present specification. Therefore, claim 2 does not inject new matter into the application. Withdrawal of this rejection is respectfully requested.

Rejection Under 35 U.S.C. 112, second paragraph

Claims 2-5 and 13-15 have been rejected under 35 U.S.C. 112, second paragraph as being indefinite. Applicants traverse this rejection. Reconsideration and withdrawal thereof are respectfully requested.

Claims 2, 4, 13 and 14 have been rejected for reciting language that does not have antecedent basis. The amended claims now provide antecedent basis. Therefore, rejections of these claims have been overcome.

Claim 13 has been rejected for reciting "population of transfected connective cells". Claim 13 has been amended to recite "population of transfected chondrocytes" in order to maintain consistency within the claim.

Rejection Under 35 U.S.C. 103(a)

Applicants acknowledge Examiner's finding that the claims are free of prior art.

Double Patenting Under 35 U.S.C. 101


Applicants acknowledge Examiner's withdrawal of the rejection under 35 U.S.C. 101 over 09/707,900 in view of the submission of a terminal disclaimer by the Applicants.

The Commissioner is hereby authorized to charge any additional fees which may be required, or credit any overpayment to JHK Law's Deposit Account No. **502486** during the pendency of prosecution of this application. Should such additional fees be associated with an extension of time, applicant respectfully requests that this paper be considered a petition therefor.

Respectfully submitted,

JHK Law

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